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Affordable Housing Alert

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HPD implements Private Housing Finance Law Amendment permitting collection of rental assistance rents above legal rents

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HPD establishes procedures for the implementation of Private Housing Finance Law (PHFL) Section 610.



What's the Impact

- / HPD will prioritize projects with urgent cash flow or repair needs.
- / DHCR will promulgate rules governing registration of rental assistance rents.

Pursuant to a recent amendment of the PHFL previously discussed in our [December 16, 2022, alert](#), owners of affordable housing properties are now permitted under certain circumstances to collect full rental assistance rents, even when the property is subject to rent stabilization and lower legal rents have been registered with the Division of Housing and Community Renewal (DHCR).

This legislation is intended to address the situation where an owner has Section 8 assistance (or other forms of rental assistance) and has the potential to collect additional rental subsidy based upon the Section 8 rent setting rules, but has registered legal rents on the property that can constrain the amount of subsidy they may collect.

PHFL Section 610 requires that the property be subject to a regulatory agreement with a state or municipal agency or public benefit corporation that permits the collection of such higher rents. The City of New York, acting through its Department of Housing Preservation and Development (“HPD”) has [provided guidance](#) to owners seeking to amend existing HPD regulatory agreements to enable collection of higher rental assistance rents. HPD will prioritize projects in their existing portfolio where additional rental subsidy will address urgent cash flow or repair needs, or projects in their development pipeline where the additional income from rental subsidy will assist in the underwriting.

HPD has indicated that actual rents, legal rents, and rental assistance rents must each be registered with DHCR, and expects that DHCR will promulgate rules governing the registration of rental assistance rents. If rental assistance is terminated for a given unit, the lower legal rent or regulatory agreement rent must be charged, and renewal leases must include a rider explaining applicable rents and tenant shares.

What’s next?

Interested owners may submit [a form](#) to HPD to express interest in amending existing regulatory agreements to permit collection of full subsidy rents. HPD has not yet released guidance for owners without an existing regulatory agreement. Nixon Peabody is monitoring DHCR’s promulgation of rent registration rules in response to the new legislation.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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